Chapter-II

HISTORICAL BACKGROUND OF THE NAGA TRIBES

The ancient history of the Naga tribals is shrouded in obscurity. They live in complete isolation for centuries with their distinctive customs and tradition in self-governing villages. It is said that the word Naga was perhaps first used by Ptolemy in the fourth century A.D. as nanga qua naked (Centenary Literature Committee, 1991:1), but the generic name to denote Nagas as they are today was not in use before they came in contact with the outside world. They established small village states similar to those of the Greek City-States on the hills and mountain ridges and spurs above the valleys. Thus, in the midst of
complete isolation, war and feuds, they were not conscious of oneness as of being Nagas today and failed to develop an integrated national political structure then.

On the plains of Assam, prior to the Ahoms, Hindu kings were ruling in Kamarupa from the 4th to the 12th century in which period, the Nagas were not known to others. Ptolemy, the historian is possibly the only one to make the first account of the Nagas (Ao, 1970:29). The Ahom Buranjis, the only official chronicles of the Ahom kings from which we get some idea of Naga history. Thus, after the advent of the Ahoms, we come across many references to the Nagas and Naga settlements. From these chronicles we learn that Prince Sukapha, who became the first Ahom king of then Assam entered into the North-East of Assam from Burma through the Patkoi range. The Ahoms were Mongoloid descendants of Tibeto-Burman stock and of Siamese-Chinese speech, who settled in the eastern most part of the Brahmaputra valley (Ibid:30).

The Ahoms ruled over Assam for nearly six hundred years, right up to the annexation of the province to British India in 1826. A study of Ahom-Naga relations reveals sporadic clashes for one reason or the other throughout the six hundred years of Ahom rule in Assam. Most of these clashes were with the Nagas of the Patkoi mountains. Ahom rulers claimed these Nagas as their subjects and a post of Khamjangia Gohain was created to look after them. But the
Nagas rebelled against this imposed subjugation effectively, and numerous expeditions had to be dispatched from the valley. In many of these clashes the Ahoms suffered more losses than the Nagas (Ramunny, 1988:11). It was thus found that, during the Ahom civilization, the Nagas often stood out in open rebellion because of Sukapha's treatment of the Nagas was ghastly and barbarous. The memory of his wanderings along the valley of the Dihing river is still preserved in various local names and tradition (Ao, 1970:32).

Following this from 1268-1488 under the reign of Suteupha, the son of Sukapha, the accounts are again silent so far as the Ahom Naga relationships are concerned (Ghosh, 1982:64). However, during the reign of Susenpha in an expedition against the Tangsa Konyak tribe, the Nagas defeated the Ahom forces in retaliation (Ao, 1970:32). History further says that Susenpha himself fled from the field, and the command was taken over by the Banrulia Gohain who defeated the Nagas eventually. The Akhampa Nagas presented a sword to him as a token of their friendship henceforth with the Ahoms (Ibid:33).

Nagas were not conquered by the Ahoms for permanent rule but used to be subdued temporarily when occasion arose. Once subdued, the Nagas used to pay tribute to the Ahom kings. The story of Supimpha and Karengpa, a Naga chief, is an example of Ahom-Naga blood relationship (Ibid:33). Thus,
eventually the Naga chief surrendered and agreed to pay tribute, and in return was granted possession of a particular hill feature which previously was a bone of contention between the Ahoms and the Nagas (Yonuo, 1984:59).

The Ahom rule was followed by the reign of Suhungmung from 1497-1539. An expedition between the Aitonia Nagas against the Ahoms occurred in 1504 where the Aitonia Nagas was defeated, and acknowledged the supremacy of the Ahom king. The Aitonia Nagas sent a daughter of their chief and a present of four elephants as a peace offering. They also agreed to pay a yearly tribute of axes, gongs and amber (Ao, 1970:33). In comparison, such offerings of girls for friendship treaty and tribute may also found among the Asiatic tribal system in early civilization where the system of wife-giving was a means of establishing friendship among the tribals (Friedman and Rowland, 1977:217). Suhungmung was killed in January 1539, by the conspiracy of his son Suklenmung who got him murdered by a Kachari servant of the king, with the servant being eventually apprehended and killed by the palace guards (Ghosh, 1982:66). The reign of Suhungmung's 42 years was followed by three Ahom kingships namely under Sutyinpha, Chakradvaj and Gadapani respectively, during which time, records of any Ahom-Naga conflict are absent except for some minor cases. During the reign of Gadadhar Singh as the king of Assam (1681-1696), he visited many places in Assam and
Naga village states in the guise of a trader, cultivator and as well as a Naga. Punitive expeditions were executed during his reign when the Nagas raided the Doyang valley and thus were suppressed and their houses burnt down. Some of the Nagas including their chiefs were captured and beheaded.

Thus the later history of the Ahoms exposes a sort of mixed relations with the Nagas, confined mainly to the Naga tribes occupying the low hills adjoining the Sibsagar and Lakhimpur Districts. Some historical versions state that, some of the Naga chiefs tried to establish cordial relations with the Ahom monarchs by way of offering girls to the royal harem as tribute. Following this, another important factor for Ahom-Naga relationship was that, there were a number of brine wells in Mahang and other places among the Eastern Naga regions. For this reason, the Ahom Government, therefore, had to keep the Eastern Nagas within good relation so that sufficient quantities of salt could be drawn from the brine wells. Except for some unhappy incidents, the Ahom-Naga relationship was maintained through a confederation which was periodically held in the capital of the Ahom kings.

Since time immemorial, there used to be regular trade between the Nagas and the people of Assam. The Ahoms married tribal girls; and enterprising tribals, who could show their mettle as worthy were admitted into the Ahom fold, and became to all intents and purposes equal in rank
and status to the other Ahoms (Ao, 1970:38). Since that
time we do not come across any more Naga raids into Ahom
territory or of any punitive action against the Nagas.

Thus the Ahom-Naga relationship beginning since 1228
A.D. were characterized by a curious course of war and
friendship. Under such circumstances, Assam could not
extend her authority properly to the Naga village-states.
Under the ancient Assam rule, some of the tribes, it is
surmised may have been more dependent upon royal patronage
than they are now, but the Naga territory was never
considered an integral portion of the sovereignty of Assam
(Yonuo, 1984:61). Above all, the Assamese could not control
the central and south-east portions of the Naga hills
although most of the Naga tribes had social, economic and
cultural intercourses with them. In a nutshell, the Ahom-
Naga relationships were characterized by exacerbation,
conflict, contemplation and friendship and such an enigma as
history reveals is still continuing as is described today.

The Nagas and the British Colonial Rule

The Ahom period of relationship was followed by the
British invasion hence the period of 1824-1826 (Ibid:63),
owing to steady decline of Ahom power since the middle of
the 18th century (Ganguli, 1984:5). Thus the closing years
of the 18th century witnessed the disintegration of the Ahom
dynasty. The conclusion of the Anglo-Burmese war and the
treaty of Yandabo of 1826 ushered in the British occupation of Assam. This in consequence meant far reaching consequences for the Naga tribes of the hills.

The British were the first to come into regular contact with the Naga tribes inhabiting the south and south-west of the Naga hills, particularly with the strong and numerous Angami Nagas. The British Government of India then were reluctant to take over the Naga hills as it was considered an expensive policy. Their main concern was to prevent the constant raids and warfare waged by the Naga tribes on the plains of Assam, which proved to be a deception to colonial administration. However, raids and plunder continued and the Government finally decided to conquer and rule the Nagas to safeguard their interests.

Eventually, the British control was established in the Naga hills area following a period of 50 years and more of explorations and punitive expeditions. Beside, to govern them more effectively, the British Government adopted a policy of "divide and rule" with the application of minimum force through the local officers associated with the native rulers, introduced in the 1950's (Yonuo, 1984:72). The British Government before taking up any responsibility for administration of Naga areas used their superior force to punished the tribals (Ramunny, 1988:13). Before the imposition of the British rule, the Nagas were described to be primitive, weak, poor, nasty, wild, disunited and
backward in all aspects of their lives. Under such circumstances, the Nagas were compelled in stages by the imperial colonial systems to be transformed. Alemhiba Ao paraphrases the then British policy that, "But all the hillmen were to be held that we had no wish to interfere with their (Nagas) internal affairs. All that we sought was peace and free intercourse; and all who acknowledged our virtual supremacy and gave a small tribute were to be admitted to terms (1970:47)."

The process of establishing administrative control over the Naga village-states was slow due to conflicting policies of the British Government. After knowing the realities of the situation, the British felt that, on one hand it would be necessary to extend administrative control as far as the Burmese frontier, and the other point was to leave the hill people alone without interference except some occasional military expeditions to punish the tribes when necessity compelled. However, the policy of complete non-interference proved a failure. Later in 1875, it was decided that the Government should proceed with a systematic execution of the survey of the Naga Hills not only for the purpose of exploration but for the gradual establishment of political control so that the borders of British rule could be extended.

Later, the British occupants were settled at Kohima followed by an establishment of an administrative sub-center
at Wokha in the Lotha country to maintain law and order. Sixteen Naga villages accepted the British protectorate, and a house tax of Rs.2/- was levied which is still continuing today as a legacy (Ramunny, 1988:15). Moreover, several powerful villages also came with offers of submission. There were no indications of unfriendly spirit on the part of the Nagas. Thus, under the policy of Sir Cambell, after much deliberation, came to the conclusion that the only satisfactory plan of dealing with the Naga tribes was to bring about gradual establishment of political control and influence over them without any assertion of actual Government (Ao, 1970:73-4). Thus the British Government conducting its affairs left undisturbed the Naga tribal way of life so they could follow their own customs and practices. For this purpose, a military occupation of territory and a loose system of political control of some sort of minimum interference over tribal customs were introduced.

Thus the British annexed the independent Naga village-states into British India and little by little extended their control over more and more Naga areas. In 1881 the colonial government constituted the Naga Hills into a District of British India (Ganguli, 1984:14). The Naga Hills District only comprised the southern and central portions of the hills, to the exclusion of mountainous Tuensang area to the North-East inhabited by war-like Naga
tribes. With the introduction of administration, hostilities in the Naga Hills gradually scaled down to permit a relatively peaceful life of cultivation and trade.

Following this in 1885, Mr. W.E. Ward's proposals were approved by the government of India. The assertion of the proposals were, to entrust more authority to the local chiefs or headmen as regards the settlement of disputes according to customary law, to the extent of specially burning a village to be allowed as a last resort. This was practically a step towards the amalgamation of a considerable tract of trans-frontier country with the British district (Ao, 1970:107-8). In this, one sociologically reads the importance of the Naga village councils in itself for the Nagas besides the recognition of its importance even to the colonial power.

Finally, an agreement was forced upon the suppressed Naga hillmen according to which all villages would have certain functionaries, i.e. Gaonbura (village elders/government agent) who in collaboration with the village councils would be responsible for maintaining peace and order in the occupied territory according to local customs and tradition as well as carrying out the wishes of the government from time to time. The administrative officers could not safely go about the hills unattended; they toured even distant villages and asserted their authority by establishing friendly contacts with the village headmen to
whom the government had given the right to decide disputes besides village administration according to Naga customary laws.

The government appointed paid interpreters called Dobashis from among the native men of high influence and ability to help the Deputy Commissioner (DC) in the settling of disputes, communication of orders and to report major incidents which required attention. The Dobashis (government interpreters) knew Assamese who could translate local dialect into Assamese played an appreciable role in enhancing the British interest in the area. With their help, the British occupied the Ao Naga hills in 1890 and a new administrative sub-center established in Mokokchung. Thus the number of subdued villages continued to grow and with them the number of Gaonburas (government agents) and Dobashis (government interpreters) as well.

In retrospect, the British legacy to the Nagas after their withdrawal from India in 1947 is considered to be one of mixed blessings. Thus, they brought with them modern political ideas and institutions, education, science and philosophy on one and rebellion, nativism and nationalism on the other. Thus in the latter periods the deeds of the British policy of non-interference was at variance with the minds of the educated classes of the Nagas and the effects of the foreign rule were pointed out to the masses as shall eventually be discussed.
The Village Council and Provisions under Indian Constitution

Having briefly dealt with a historical background of the Naga tribes, in this chapter, we briefly scan the legal status of the Naga village councils and of their position hence colonial control to contemporary situation of state control within the union of India, particularly, the constitutional measures thereof. In contemporary Nagaland hence the attainment of statehood in 1963, it was decided that the village councils shall consist of members selected according to the tribal customary ways by the residents of the villages. Generally, the members of the council may not be the same in all with Naga tribals. It may vary from one village to another according to their own respective customary laws, which shall be discussed in later chapters. Besides the constitutional provisions and its status, there are also many other factors which protect the local self-government bodies like the village council for one.

Before we go into detail about the legal status of Naga village councils, and its provisions under Indian Constitution, it is important to define first of all what is custom and customary law which are the two key concepts involved with the working of the Naga village council in general. Thus, according to Paul Radin, an Anthropologist, a custom may be defined as "A part of our properly functioning
culture. It belongs definitely to the past. At best it is moribund. Customs are an integral part of the life of primitive peoples. There is no compulsive submission to them. They are not followed because the weight of tradition overwhelms a man, a custom is obeyed there because it is intimately intertwined with a vast living network of interrelations, arranged a meticulous and ordered manner (Diamond, 1974:256)." Thus in the same way as custom, customary law as defined by Leopold Pospisil runs as such: "The positive law governing all the phases of tribal life, consists then a body of binding obligations, regarded as a right by one party and acknowledged as a duty by the other, kept in force by a specific mechanism of reciprocity and publicly inherent in the structure of their society (1971:29-30)." Traditionally, in this respect the Naga village council in general has the power to promulgate and regulate all aspects of community and individual life in the village, according to the set codes of conduct and to penalize those who transgress these codes which is aimed at ordered village social life. Except on rare occasions the village council modifies and outdated traditional codes or develops new ones to meet new situations.

The Indian Constitution recognized the tribal people as an integral culture and society of larger India. The Sixth Schedule read with Article 371-A of the Indian Constitution seek to protect the Naga religious and social
practices, their customary law and procedure and their land holding patterns. Even the Criminal Procedure Code (IPC) under the Indian Constitution is not applicable to most areas of the north-eastern region of India and to the Naga tribals in particular. These provisions were supposed to be the constitutional guarantees to the Naga people’s right of self-government. It was also provided in the Assam Clauses Act, 1915 that, no Act in the absence of special provisions to the contrary shall come into force in the Hills District including the Naga Hill District - Sec.14 (Rao, 1976:46).

Provision was also made to protect the Naga tribals from social injustices and all forms of interference under Article 46 of the Indian Constitution which particularly enhanced the working of the Naga village councils according to local customary laws and convention (Upadhyay, 1991:78). This provided a strong sense of freedom for tribal villages and Nagaland in particular, for which reason they are able to maintain social and cultural entities without any outside interference and as such enhance the function of the Naga village councils.

The Sixth Schedule to the Constitution of India, further envisages powers for autonomy of the tribal people which in spirit covers the Naga tribes also by protecting their land and customs. However, the District Councils were not established in the erstwhile Naga Hills District but the interim provisions (from 1961-1963) of the said schedule had
the effect of maintaining status-quo in respect of Naga lands and customs. The erstwhile Naga tribal areas, which now comprise the Tuensang District of present day Nagaland, the pre-constitution position in those matters were allowed to continue undisturbed by the President of India acting through the Governor as his agent under the provisions of the same Sixth Schedule which are read and understood as a patronage of perpetuation of the Naga village self-governance.

Prior to Indian Independence, the Naga tribes were in complete isolation from each other and divided into hostile camps, though, within their respective tribal villages, the village councils functioned effectively as pure republics particularly the Angamis and Aos, having their own self-government which are still in existence even today. Under the supervision of these village councils every citizen enjoyed political stability, social justice, religious freedom including complete equality and equal status between men and women and absence of communal feelings.

The Simon Commission in the 1920's stated in its report that the Naga freedom in the pursuit of their traditional methods of livelihood and the reasonable exercise of their ancestral customs should be protected. In support of the Simon Commission's statement, Section 92 of the Government of India Act, 1935, provided that no act of
the Central or of the Provincial Legislature could apply to the Naga Hills District unless the Governor so directed with a view to safeguard the customary laws and usages of the Naga people (Puri, ed. 1973:218). It was further enshrined in the Constitution (Thirteenth Amendment Act, 1962) which provides that no Act of Parliament is binding upon the Naga people and hills in respect of section 'A' of sub-section (2) and (3) of the Constitution unless the Legislative Assembly of Nagaland by a resolution so decides (Yonuo, 1984:250). In this way, the Constitution upholds the distinctive Naga identity, particularly of the village councils. Further, both the Assam Frontier (Administration of Justice) Regulation Act of 1945 and Rules for Administration of Justice and Police in Nagaland, 1937 (Act of 1974) recognized the authority of the traditional tribal customary institutions, which have further been enshrined under the Thirteenth Amendment Act, 1962 of the Constitution.

In the year 1957, the Drafting Committee of the Naga People's Convention, within the framework of the Indian Constitution laid down the 16 Point Agreement to settle the Naga political problem amicably. Under it, Section 7,(2) and (3) provides the fullest degree of autonomy and self-government to the Naga village-states (see Appendix-I). It also provides the Naga village councils to settle disputes in matters relating to civil and criminal justice according
to Naga customary law which further enhanced the so
perceived sovereign power of the Naga village councils.
Thus, every Naga village has its own independent polity so
to speak where power is vested upon the chiefs and a council
of elders.

The Nagaland (Transitional Provisions) Regulation,
1961, provided for the Constitution of the Village Court,
Range Court and the Tribal Court in Nagaland. However, the
Range and Tribal Courts were abolished in the year 1973 and
1990 respectively since the Government found it superfluous
as regards to their functions. Beside, the 16 point
Agreement (Administration of Justice), 1957, Section 9(1)
(see Appendix-I), further provides more power to the Naga
village councils on decision making according to local
customary law. To enhance the above provisions, the
attitude of the Central Government towards the Naga tribals
is that, it should have as much freedom and autonomy as
possible so that they can pursue to live their own lives
according to their own ways.

It may be assumed that, the Naga chief or headman’s
power is theoretically absolute. But in practice it is
limited in the sense that they are always assisted by a
group of village elders appointed by the chief (as in the
case of Angamis and Semas) or headman. In support of this
assumption, headmanship is more than a political position in
the traditional social system as well as the contemporary
situation in so far as the Naga village councils are concerned. The villagers themselves refer to headmanship as the epitomisation of their sacred customs of the ancestors (Pandey, 1989:91). Article 371-A (Thirteenth Amendment) Act, 1962, Section (1) (a) and (b) further recognized the traditional rule of the village councillors and their headmen. In connection to the jural function of the village councillors by convention, most village ordinances and regulations are originally drafted as model legislation by the village council in its discretion. A similar method of jural function may also be found among the Kamo's village of Japan, under Local Autonomy Law Act where Mayors in village Japan may be equated with a Naga village chief or headman by comparison (Ward and Hall, 1959:363).

In matters relating to inter and intra-village feuds, the state authority in the form of the Deputy Commissioner (DC) or his Sub-Divisional Officer (SDO) at once, gather the elders of the disputing villages and settle the problem amicably. Prompt and stern punishment was assured for the defaulter to meet the ends of justice. Under such circumstances, many codified laws like IPC, Cr.P.C. etc. are practically not applicable in Nagaland, particularly in the light of Naga customary law and convention as enshrined in Article 371-A, section (a). (see Appendix-II).
Generally, it is found that, the customary law of society comprises the customs and practices observed as a right from antiquity by a given society. As such, the Nagas had a discernible legal system regulating the conduct of its members, and such body of observances and rules is not codified but merely inherent in the actions and visible in the social relationship of village social structure. Naga customary law, then, is that body of native customs which is at present administered in the village court and Dobashis (government interpreters) court, based on custom and tradition which are binding upon the individual as duty and responsibility and as a matter of solidarity and identity (Imchen, 1979:87).

In this respect, the Dobashi's function to interpret was enhanced owing to litigant quest for higher bodies than the village council for justice. Thus the Dobashis were empowered to establish a court in 1935, wherein they could on behalf of the state authority try cases on the basis of customary law. Such Dobashi court by physical establishment are found in the administrative centres like Kohima, Tuensang and Mokokchung today.

Thus the basis of law for the Naga tribals hence tradition to date are based on oral tradition and human experiences as a procedure and rule rather than on codified and framed law (Diamon, 1974:3). Except the unwritten part of the laws and convention, the written law or any other
centralized legal systems were unknown to the Nagas. In support of the age old Naga conventional rule, Verrier Elwin stated that, every decision is supposed to come from the people at large, where the chiefs or elders have no right but to approve and enforce it. Hence, the people propose, the council sanctions it and the council of elders promulgates (1964, Rept.:157). Thus, beside being the recognized authority, the village councils possesses a feeling of cohesiveness through kinship and lineages which strengthens their body and action. In comparison, the same custom is also found with the Vietnamese village councils where cohesiveness is highly valued by the villagers (Hickey, 1964:89). Thus the post Indian Independence period envisaged a total reorganization in the power structure of the Hill Peoples, particularly of the Naga village councils. With the all important British bureaucrats gone, the provisions of the Sixth Schedule to the Indian Constitution ensured much needed legal guarantees to the scheduled tribes, of which, the Naga village councils today is a landmark.

The Naga Village Council and Provisions through Enactments by the Nagaland State Legislature

Nagaland is mostly a home of villages in which every village has several clans residing in it. Khels or localities, traditionally determine the different clans in
the olden days. However, in the contemporary times, the Khels or localities do not fully determine the clan distribution in the various localities in the village. In fact, more than one clan lives in each Khel or locality, except in some villages where the traditional set-up still exists strongly.

Before the introduction of British administration into the Naga Hills District, in fact, every Naga village was away from the pale of any centralized administration. They had their own way of administration, which was village centered. Though village centered, it had its own way of maintaining law and order and dispensing justice, which arises as a response to the social needs, sense of social justice, equity and ethics, found to be functionally operative and effective become readily accepted by the people concerned. However, after the introduction of British administration among the Naga tribal villages in general and the three villages under this study in particular, the two institution of Gaonbura (GB) and Dobashi (DB) were introduced, particularly for the supervision of village administration based on local customary laws and convention of the hill tribes (Bareh, 1970:154). The Gaonburas (village elder/government agent) are village heads and through them the administrative officers used to get certain works done by the villagers or certain orders carried out. By virtue of their position as village elders
they had the de-facto power of maintaining law and order in collaboration with the village council. They were, in fact, endowed with judicial power but by virtue of their position in the village in general, as a result of which they used to settle cases amicably or even by imposition of fine according to customary laws and convention.

Traditionally, there was no problem of law and order for the early administration, because dacoity, robbery, pick-pocketing, murder, etc. or sexual crime were practically non-existent. They were, in fact, governed by their own traditional system of maintaining discipline, law and order, emphasizing on the conformity or normality of social behaviour. As stated by the Law Research Institute, Guwahati, "In the traditional dimension of Naga village society, the mode of dispensing justice is that they make no clear-cut division between civil and criminal offences as is done in modern jurisprudence. The offences are primarily considered to be directed against individuals, groups or the society as a whole (1981:23)." The notion as it exists at present is more or less similar to that of natural justice transmitted orally from generation to generation, modified from time to time consistent with experience gained and the social changes due to spread of Christianity, education coupled with material advancement, etc. An individual is not allowed to take law into his own hands. Each dispute or complaint is settled after hearing the parties and their
respective representatives (Ibid:153). However, in some rare cases of criminal offence which was promptly dispensed with by the administrator with the help of Dobashis; there was very little need of any police personnel to maintain law and order particularly within the villages in general.

An important alteration was the re-organization of the Naga village councils, when in 1961-62, three grades of councils have emerged out of some arrangement; which are the village, the range and the tribal councils, set-up under Article 13 of the Nagaland Regulation Act. According to S. Chaube, the Commissioner was to fix the date for constitution of village councils for the villages, range councils for village groups and tribal councils for the tribes. The interim body might, with the approval of Governor, make bye-laws regulating "the constitution of the Village, Range and Tribal Councils, the powers exercisable by the councils in trying the disputes involving breaches of customary laws and usages, and the powers of such councils in other matters. These provisions were in addition to, and not in supersession of the Naga Hills Tuensang Area (Administration) Regulation, 1957 (1973:150)." Alemchiba Ao stated that, "Tuensang Regional Council comprising of elected representatives of the tribes therein will supervise and guide the working of the Village and Area Councils in the District and further no law passed by the Nagaland Legislature will extent to that District unless so
recommended by the Regional Council (1970:200)." However, in the case of Area Council which comprises a range or a circle of villages as its name implies were found to be no more useful and so were disbanded (Ghosh, 1981:182). Finally, the Nagaland Village and Area Council (Second Amendment) Bill 1990 abolished the Area Councils in the state stating that no important function were assigned to the Area Council in general, nor seen fit to (Nagaland Times, July 25, 1990).

In the case of Tribal Councils, it is to look to the implementation of Community Development Work, matters relating to the maintenance of law and order in general. The councils are further empowered to undertake any other side issues which would appear relevant. However, the Kathing Commission states that tribal councils were practicing tribalism, and later suggested its abolition. Consequently, the government of Nagaland abolished all the Tribal Councils and organized to alternate the District Councils in its place in December 1973 (Ghosh, 1979:207). However, currently, in the whole of Nagaland state, the Tribal Councils are practically non-existent.

Besides the Area and the Tribal Councils (now abolished) the said Article 13 of the Nagaland Regulation which still has re-organized the old Naga Village Councils consists of the recognized chief or chiefs, Gaonburas and the elders selected by the village through consensus in
accordance with the customary procedure. The village councils are responsible for matters relating to the internal administration of the village and its organization, welfare works and enforcement of all orders, rules and regulations passed by the legally empowered authorities including the maintenance of law and order.

The study of Naga society, particularly, the internal administration of the village in general are more or less republican and democratic in its form. These system of republican and democratic rule, in fact, prevailed among the Angami, Ao, Lotha and apparently Sangtam tribes. However, with the Sema and Konyak, it was the rule of omnipotent autocratic chiefs. Each village amongst the Aos is a small republic, which would be hard to find anywhere else. And as stated, headmen or village councillors do exist, but their authority is very small particularly in the contemporary situation (Elwin, 1969:324). However, the rule of the Angami chiefs seems to have been very oppressive and many of the Nagas have been thereby driven from their own villages. Further, the authority of title of the chiefs in an Angami village is hereditary, and apparently with the Lotha chiefs, but not necessarily from father to son. The system of hereditary chiefs may also be found among the Mizos, where the chieftainship was passed on to the eldest son. The chief, among the Mizos was similar with that of the Lotha chief (Eastern Panorama, February, 1994:34).
However, owing to Christian proselytisation and modern civilization along with the acts of Parliament to Mizo Autonomous District Council established under the Sixth Schedule to the Constitution of India; in 1954, the chieftainship was abolished and Village Council introduced in its place (Ibid:34-5). In most of the Naga villages, there are generally a council of elders but their authority is set and confined to the extent that their orders are obeyed in so far only as they accord with the wishes and convenience of the community, they have no power alone to take cognizance of offences against the person or property of individuals as is represented by these three tribes in this study (Elwin, 1969:285).

In case of the Sema society, the village chief is the only person who possess prerogative power and supreme position in respect of power, status, wealth and property, who are popularly known as Akekaa (Hutton, 1968 ed.151-52). As with Sema Naga, the Konyak chief is also generally considered as an autocrat, particularly among the Wanchu group who possesses supreme position in respect of political, economic and religious authority (Furer-Haimendorf, Christoph Von, 1969:53). The Konyak chief is deemed as the richest man who formulates rules, policies and administration of the village. The Konyak chiefs' rule and administration clearly reflects the tyrannical institution of an ancient German regime, where all the powers and
authority generally were vested upon the Kings and Queens. Apart from the Sema and Konyak Nagas, in the study of traditional Naga villages, their system of administration and self-government is more or less a democratic in its form.

Some more Naga tribes to mention like the Zeliangrong and the Rengma village councils and their system of self-governance are similarly determined by a democratic forms of village government. In such types of government, the chiefs are bound to take the advice of the elders in general who surrounded him and insure citizens approval and satisfaction. Seemingly, the Chakhesang Nagas are also described to be similar to that of the Angami system of self-government. Generally, in all the Naga villages, the ruling clans headed the village administration. This system of ascribing portfolios of administration to clan or family and prominent clan members in the respective villages is common in other Naga village society at large.

The powers assigned to the village heads and their chiefs generally for the Naga tribes embodied in the original Act of 1961 (Article 13) the civil case aspects are still kept in force (Bareh, 1970:183). The village headmen and their chiefs were authorized to impose fines within the limit of Rs.50/- for some specific cases like cheating, fraud, assault, etc., or depending upon the nature of offence or penalties according to respective Naga village
and their customs and tradition. In support of their function, the Supreme Court in the case of Nagaland suggested the formulation of one uniform set of rules for the whole of this area based on customary laws which are uncodified (Chaube, 1973:103). Thus, the customary laws and usages have survived through many centuries and are in a high degree conducive to the satisfaction of the tribal people, and to the achievement of social cohesion and stability as well as the preservation of their traditional cultural values. It was also stated under the Rules for the Administration of Justice, 1874 that all civil cases in which the parties are indigenous inhabitants of the hills, endeavour should be made to induce them to submit their cases to a settlement by the village councils (Law Research Institute, Guwahati, 1981:26). However certain cases were excluded from their jurisdiction, particularly of criminal cases and of constitutional violations, in the contemporary situation.

At a later stage, when the Interim Government (i.e. 1961-1963) for Nagaland was formed, as per Indian Parliament’s decisions, two important provisions was made for preserving Naga customs and tradition among the villagers in general (Yonuo, 1974:244-46). It was thus agreed that no act or law passed by the Union Parliament effecting the following would have any legal form in Nagaland unless specifically applied to it by a majority
vote of the Nagaland Legislative Assembly: "1) Naga customary law and procedure and 2) Civil and criminal justice (Bareh, 1970:175)." An important provision is that no appeal against the unanimous decision involving the breach of customary law of the village court among the Nagas in general shall lie (Ibid:176). The traditional institutions which is covered by this act under the Nagaland Legislative Assembly Act, finds root under the larger ambit of Article 371-A of the Constitution of India, which provides it a unique form of local self-government in Nagaland.

Thus, to highlight the above protective and preservative measures, when the former Prime Minister Rajiv Gandhi, while introducing the Panchayati Raj Bill in the Lok Sabha on 15th May, 1989, for the three respective tribal states of Nagaland, Mizoram and Meghalaya, the Chief Minister of Nagaland refused the idea of introducing Panchayati Raj on uniform basis throughout the country. He then held that "Nagaland has a different institution at the village level. We have a different socio-cultural milieu and our traditional institutions have stood the test of time (Ura Mail, April 5 and May 17, 1989)." Here to extrapolate further, these traditional village level institutions guided by customary rules, regulations and practices are the unwritten or uncodified set of rules and conduct hallowed by age-old observance in a particular socio-cultural unit,
which acquire public sanction in due course because of their uninterrupted continuity, sanctified by unquestioned authority emanating from the ancestors of any given ethnocultural group (Law Research Institute, Guwahati, 1981:18). However, our view is that such rules and practices may undergo changes, modifications, alterations, etc. along with the march of time for which, the three representative tribes and villages, i.e. Ao, Sangtam and Lotha and Sungratsu, Chimonger and Wokha are significantly topical.

Village Council Vis-a-Vis the Putu Menden, Yangpumji and Oyan Yansasa

A pertinent feature we are required to note here is that the term 'village council' is a larger term that is in function synonymously taken as the one and same with the traditional nomenclatures of Putu Menden, Yangpumji and Oyan Yansasa. In fact, in all levels of normal conversation, the organization is addressed and referred to as village council. However, there is a distinction to be made out in this.

When one refers specifically to the tradition village council, it is to be understood in the traditional spirit of what the Ao-Putu Menden, Sangtam-Yangpumji and Lotha-Oyan Yansasa exactly stands for and on the basis of its age old organization. Thus in the traditional sense contemporarily as a matter of continuity of these
institutions, their function is to be understood in the strict context of tradition and custom through the medium of customary law. Also it is to be understood that these institutions are manned by functionaries carrying nomenclatures like Tatar for the Ao, Lakhimru for the Sangtam and Tongti for the Lotha tribe respectively.

However, under state control hence the 19th Century of colonial rule till to date under the Union of India, state regulations and legislations have subordinated these traditional institutions under their authority. As such, the first of these actions were the appointment of Gaonburas (village elders) as state authority representatives to these institutions to relay government orders and directions from the 19th century onwards, which stands re-affirmed by the Nagaland Legislative Act of 1966 on villages and amended time to time according to needs finally calling these institutions "Village Councils". And it is this nomenclature that has stuck when commonly referring to these institutions.

However, in function, these Gaonburas are not involved when these village institutions function in the strict levels of tradition and custom, and thus their actions are labeled as that of the Putu Menden, Yangpumji and Oyan Yansasa. The Gaonburas are involved in these institutions when state matters are concerned like government orders, larger law and order issues, financial
grant and aids and other developmental aspects. For these matters, the Gaonburas and the traditional functionaries to these institutions co-operate together as members of the "Village Council". For these reasons, many times the English nomenclature of "Village Council" have come into common use. Of other details connected to these shall subsequently be discussed in the later chapters.

Naga Village Council and Customary Law

Simply by customary law, we understood it to be those actions that by custom controls and regulates public behaviour to the pursuit of providing justice, which are practiced even today as a matter of continuity of tradition. In Leopold Pospisil's explanation of it as "the positive law governing all the phases of tribal life" sums up conveniently (1971:29). By a simple assessment, Naga customary law as found with most of the Naga tribes in common practice are as follows in brief, which is the prime duty of the village councils to perform and oversee. It falls into two broad categories, namely, Civil and Criminal. Marriage, divorce, inheritance, minority, guardianship, maintenance of children and minors, land disputes, inter-clan disputes, etc. are some of the civil matters. Criminal cases include homicide, theft, defamation, arson, adultery, assault and fraud (Law Research Institute, Guwahati, 1981).
Cases relating to injury, assault, mischief, fraud, etc. are normally settled by payment of 1-5 live pigs or the biggest cattle in the village to the aggrieved party. In cases of homicide, the guilty shoulders the responsibility of caring for the welfare of the aggrieved party besides being fined in kind or cash in later times. However, in the three villages under study, there are no remembered or known cases of homicide. For incest, the erring party besides being fined in kind are also excommunicated from the village as an act of cleansing the village environment.

For adulterous relationships, the erring partner is fined a seven live pigs. Added to it, if the husband is guilty, he surrenders all the clothing and possession to his wife and her family. In case of the wife being guilty, she surrenders all her clothing and ornaments to her sisters-in-law. In matters of rape, the offenders is made to pay five live pigs and some baskets of rice. In addition, the stigma of being a rapist affects the social standing of the perpetrator, his lineage and clan for life. Such stigma often proves a deterrence against rape, incest and even adultery.

In matters of inheritance of land and dispute arising thereof, the law of primogeniture applies in most cases of Naga tribals, the clear enforcement of which is the village council's duty. Connected to it, in the absence of male heirs to inherit, it goes to the line of cousins and in
extreme, to the clan or village community. In terms of land boundary dispute, oath taking to stake the claim is generally imposed by the village council as the last resort. The ultimate decision is provided by the council to settle the matter, where invariably a guilty party is identified and a penalty raised of live pigs or cattle.

Of cases relating to defamation, breach of public peace, cheating and fraud, depending on the gravity and nature of the incident, the guilty is fined one pig to several animals or in current situation, a cash fine ranging from Rs.10/- upwards is raised. In matters of theft and damage, the loss are made to be compensated and if so understood as necessary fines of live animals are also included.

In all the above, insane persons and young children are, however, exempted from punishment or penalties. In all these above actions it is always the village councils that supervise the application of the customary law, its interpretation and quest of justice thereof. These laws based on their customs is versatile that if a person from another village commits a crime in the village, he is accordingly tried and punished, later the case being forwarded to his native village where a similar process of trial and punishment awaits. In this way, Naga customary law is not confined to a single village in isolation with its village councils but it has versatility to enable inter-
village co-operation in matters of law and justice. Such village interactions at large enables their respective tribal tradition and custom to be strengthened and find continuity.
MAP OF NAGA TRIBES MIGRATION DURING PRE COLONIAL PERIODS

Kacha Haga
Angami
Sema
Lhota
Rengma
Chang
Ao
Konyak
Sangtam
Yachumi
Phom